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1 and less on who's the demographic we're selling to. 11:54:37

2 I suppose some of that information could -- could 11:54:41

3 be pulled from it. I think that was a little more 11:54:43

4 of it. Internally -- internally, I don't believe 11:54:45

5 we have. 11:54:50

6 Q Do you know when this was done? 11:54:51

7 A I -- I don't recall. I'd say sometime in the last 11:54:54

8 two years. And I -- and I don't actually even 11:54:58

9 recall if they followed through on it or they just 11:55:01

10 proposed it. 11:55:04

11 Q Do you know if it concerned the Jake logo as well? 11:55:05

12 A I -- I don't, but I -- I assume that it did. 11:55:09

13 MR. KIRBY: I hope you brought enough for 11:55:37

14 everybody. 11:55:40

15 MR. SOMMERS: I think you know the 11:55:41

16 source. 11:55:43

17 I'm going to have marked as the next 11:55:45

18 Exhibit 8 -- 11:55:47

19 MR. KIRBY: 9. 11:55:49

20 MR. SOMMERS: Or 9. Thank you. 11:55:50

21 -- a -- a T-shirt which I believe is 11:55:52

22 from -- from your company, Mr. Jacobs, but I'll 11:55:54

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1	that in some way we are Jake, also.	12:00:39
2	BY MR. SOMMERS:	12:00:45
3 Q	Am I also -- let me strike that and ask -- ask the	12:00:46
4	reporter to mark as Exhibit --	12:00:50
5 A	Can I put this aside, or are we still working on	12:00:52
6	this?	12:00:56
7 Q	I'll refer to it in the context. I just needed to	12:00:56
8	have an example.	12:00:59
9 A	I'm just going to fold it up. Is that all right?	12:01:00
10 Q	Thank you.	12:01:03
11	MR. SOMMERS: If I can have her mark as	12:01:04
12	Exhibit 10, a spring/summer 2005 catalog.	12:01:05
13	(Exhibit No. 10 marked for	12:01:21
14	identification.)	12:01:28
15	THE WITNESS: Would be a lot cheaper to	12:01:28
16	produce them like this.	12:01:30
17	BY MR. SOMMERS:	12:01:31
18 Q	Mr. Jacobs, if I could have you identify for me	12:01:32
19	what Exhibit 10 is.	12:01:36
20 A	I'm sorry.	12:01:37
21 Q	If I could have you identify for me what Exhibit 10	12:01:47
22	is.	12:01:51

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1 A Oh. It's a spring/summer -- it's a copy of our 12:01:51
2 spring/summer 2005 domestic or United States 12:01:55
3 catalog. 12:01:59
4 Q And if I could have you turn to page 15 of that 12:02:00
5 catalog. And I see that there are a number of 12:02:07
6 T-shirts depicted on there. 12:02:20
7 A Uh-huh. 12:02:21
8 Q Each one bearing a -- a cartoonish type of 12:02:22
9 depiction with some words underneath it. Is that 12:02:30
10 an accurate -- 12:02:34
11 A Yes. 12:02:36
12 Q For example, up at the top left-hand corner, there 12:02:37
13 is a -- a T-shirt depicted with a cabin with the 12:02:45
14 words "Life is good." and the upper right-hand 12:02:49
15 corner is -- is a depiction of Jake and a dog in a 12:02:52
16 kayak with the words "Roll Over." Do you see that? 12:03:00
17 A Yes. 12:03:03
18 Q In each of these contexts, I see that there is a -- 12:03:04
19 a saying underneath each of the character 12:03:10
20 depictions. Do you see that? 12:03:12
21 A Yes. 12:03:14
22 Q What is the reason, for example, that you use the 12:03:15

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1 words "Roll Over" or "Think Outside The Box" or 12:03:19

2 "Get Out" on these -- on these T-shirts? 12:03:24

3 A We often use common phrases to poke fun in some way 12:03:28

4 at the seriousness and the pressures out there in 12:03:39

5 the world and -- and bring things down to earth a 12:03:45

6 little more. So we do that with many different 12:03:49

7 phrases. 12:03:52

8 Q So am I correct that these phrases are imparting a 12:03:53

9 message? 12:03:56

10 A Yes. 12:03:57

11 Q All right. Now, I also see here that some of 12:03:57

12 the -- the depictions contain the words "Life is 12:04:07

13 good." underneath them. Do you see those? 12:04:12

14 A Yes. 12:04:13

15 Q And this particular context, is this also 12:04:14

16 communicating a message? 12:04:20

17 A Yes. 12:04:21

18 Q The -- in -- in connection with the -- the T-shirts 12:04:23

19 that are depicted here that say "Roll Over," "Think 12:04:36

20 Outside The Box," "Get Out," are these being used 12:04:39

21 as trademarks? 12:04:42

22 A I would have to refer to counsel. But some of them 12:04:43

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1 may be trademarks. We -- we own several 12:04:50

2 intellectual properties. And some of our more 12:04:55

3 popular ones, for example, "Get Out," it may be a 12:04:58

4 registered trademark. I don't know. I guess in 12:05:02

5 answer to your question, some are and some are not. 12:05:04

6 Q Okay. And did you do any trademark searches for 12:05:08

7 any of these words before you placed them on your 12:05:16

8 T-shirt? 12:05:20

9 A As I indicated earlier, if it was very early in our 12:05:20

10 career, we would have been unsophisticated and may 12:05:26

11 not have. As we developed a relationship with 12:05:28

12 legal counsel, we began to do searches before 12:05:30

13 commercializing products, slogan sayings, et 12:05:34

14 cetera. 12:05:39

15 Q And when did that occur? 12:05:39

16 A I think that our relationship with Pierce and 12:05:41

17 Mandell probably began in 1995, 1996, something 12:05:50

18 like that, Bob? 1996 as a guess. 12:05:56

19 Q Then am I correct that you would have searched 12:05:59

20 before you used the words "Get Out" or "Roll Over" 12:06:02

21 before they appeared on a T-shirt? 12:06:05

22 A I think that it makes the assumption that they're 12:06:07

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1	calls from any member of the public that were	01:46:49
2	intended for LG?	01:46:53
3 A	You mean has the company received any?	01:46:54
4 Q	Yes.	01:46:58
5 A	Not to my knowledge.	01:46:59
6 Q	And when I have been using the word "you," I have	01:47:00
7	been referring to you as the company, since you	01:47:04
8	understand you're appearing here on behalf of the	01:47:07
9	company.	01:47:10
10 A	I think that's clear.	01:47:10
11 Q	Okay. Thank you.	01:47:12
12	You mentioned earlier the company Miller,	01:47:13
13	and I believe you indicated that Miller was using	01:47:20
14	"life is good." Am I correct?	01:47:25
15 A	That's right.	01:47:27
16 Q	When was that?	01:47:27
17 A	Quite a while ago. I -- I'm going to take a wild	01:47:29
18	guess and say it was 1998, 1999. I'm not certain.	01:47:35
19 Q	Was it at a time that you were using Life is good.?	01:47:42
20 A	Yes.	01:47:46
21 Q	Okay. And did you receive an objection from	01:47:47
22	Miller?	01:47:51

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1 A I don't recall. 01:47:52

2 Q Did you object to Miller's use? 01:47:54

3 A I don't recall if we legally objected. I can tell 01:47:58

4 you what I do recall. Would you like me to? 01:48:04

5 Q Please. 01:48:07

6 A What I recall is that we were very concerned about 01:48:11

7 the use, in particular that they were printing 01:48:14

8 promotional T-shirts that said "life is good" to 01:48:20

9 promote their beer products. But in addition, we 01:48:24

10 were very concerned about the -- the vastness of 01:48:27

11 the ad campaign as we saw it on television. And we 01:48:33

12 got together with legal counsel -- 01:48:39

13 MR. KIRBY: Let me interrupt and caution 01:48:43

14 you not to reveal in your answer any advice you may 01:48:46

15 have received from counsel. 01:48:50

16 THE WITNESS: Great. Yeah. We got 01:48:51

17 together with legal counsel and were determining 01:48:54

18 what our options were and potential action plans. 01:48:59

19 And fortunately, by the time we had come to some 01:49:05

20 conclusions -- I'm not even sure if we came to some 01:49:12

21 conclusions yet -- as beer companies often do, the 01:49:15

22 ad campaign came and went. So the problem went 01:49:18

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1	away.	01:49:21
2	BY MR. SOMMERS:	01:49:22
3 Q	Did you ever contact Miller?	01:49:26
4 A	I don't remember, to be honest with you.	01:49:27
5 Q	Did you receive any instances of confusion?	01:49:30
6 A	I don't recollect and -- yeah, I don't recollect	01:49:34
7	whether we did.	01:49:44
8 Q	You indicated that you were concerned in particular	01:49:45
9	about promotional T-shirts that said "life is good"	01:49:48
10	to promote their beer products. What was it about	01:49:52
11	the T-shirts that you -- that concerned you?	01:49:56
12 A	We were concerned because they said the exact same	01:50:01
13	words that our registered trademark says, "life is	01:50:04
14	good." We were concerned about confusion.	01:50:08
15 Q	When you use the words "promotional T-shirts," what	01:50:10
16	do you exactly mean?	01:50:15
17 A	I mean that, to my knowledge, Miller is in the	01:50:20
18	business of selling beverages and not in the	01:50:23
19	business of selling clothing. However, they	01:50:28
20	utilize clothing and accessories, which are a	01:50:31
21	registered classification of ours, to promote their	01:50:35
22	beer and other beverages.	01:50:40

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1	Q	And to your knowledge, is it a common practice for	01:50:43
2		companies to utilize clothing and accessories to	01:50:47
3		promote their products?	01:50:51
4	A	Yes.	01:50:52
5	Q	In connection with this matter concerning Miller,	01:50:53
6		did you express concern about Miller's activity to	01:51:07
7		anyone other than your attorneys?	01:51:12
8	A	I'm sure I probably did. Friends, relatives,	01:51:14
9		business associates.	01:51:21
10	Q	Did you tell anybody other than your attorneys the	01:51:22
11		reasons that you were concerned and whether you	01:51:26
12		were considering any legal action?	01:51:29
13	A	I want to clarify that I don't recollect in	01:51:31
14		particular, but -- well, two things. I don't	01:51:37
15		recollect whether I told other people, but I assume	01:51:42
16		that I did. Considering legal actions, I guess, is	01:51:45
17		something that hasn't been established in this	01:51:48
18		conversation, and I also don't recollect whether it	01:51:51
19		was discussed.	01:51:54
20	Q	Okay. Thank you. I stand corrected.	01:51:55
21		Was the purpose of consulting with your	01:52:04
22		attorneys to discuss the issue of whether certain	01:52:06

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1	A	Baseballs?	02:04:35
2	Q	Have you ever seen a baseball imprinted with	02:04:38
3		corporate logos as promotional items?	02:04:44
4	A	Sure. I've seen the Boston Red Sox put it on	02:04:47
5		there.	02:04:52
6	Q	Yeah.	02:04:52
7		MR. SOMMERS: 'If I could have the next	02:05:08
8		exhibit marked as 11. It is a one-page article	02:05:13
9		entitled "Everything is Jake at Life is good."	02:05:20
10		(Exhibit No. 11 marked for	02:05:33
11		identification.)	02:05:34
12		BY MR. SOMMERS:	02:05:34
13	Q	Mr. Jacobs, do you recognize Exhibit 11?	02:05:38
14	A	I do.	02:05:41
15	Q	I have just a few questions about that. And the	02:05:42
16		first one is, at the bottom of the fourth	02:05:51
17		paragraph, there is a sentence that reads, "We made	02:05:59
18		a list of sayings, and 'life is good' is the one	02:06:02
19		everybody liked." Do you see that?	02:06:05
20	A	Yes.	02:06:08
21	Q	And that's -- quote is attributed to you, is it	02:06:08
22		not?	02:06:12

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1	A	Yes, it is.	02:06:12
2	Q	Is this consistent with what we talked about	02:06:13
3		earlier today?	02:06:18
4	A	I think it's fairly consistent. I think it's	02:06:19
5		probably paraphrasing a little bit the same story I	02:06:22
6		relayed to you.	02:06:27
7	Q	If I could have you run down to the -- four -- four	02:06:27
8		paragraphs later, and the last couple of lines that	02:06:31
9		read as follows: Life is good.says, quote, enjoy	02:06:39
10		your day, period, have fun, close quote. Where	02:06:42
11		other slogans can be negative, ours says, quote,	02:06:47
12		relax and enjoy what you are doing, period, close	02:06:52
13		quote. Do you see that?	02:06:55
14	A	I do.	02:06:56
15	Q	And that statement is also attributed to you. Do	02:06:57
16		you see that?	02:07:00
17	A	Yes.	02:07:01
18	Q	Is that -- is that an accurate statement?	02:07:01
19	A	Yes, I think it is.	02:07:06
20	Q	If you come down, just the next paragraph, and the	02:07:14
21		last line on that paragraph reads: "Buying items	02:07:18
22		proclaiming that life is good." Do you see that?	02:07:22

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1 work in customer service and we have not sent out a 03:11:30
2 notice to watch out for something like this. And 03:11:35
3 we also don't have systems in place to necessarily 03:11:38
4 record such actions or -- or experiences. 03:11:41
5 Q Do you know of any customers who are or have 03:11:44
6 negative feelings towards LG and its products? 03:11:57
7 A Sure. 03:12:01
8 Q And who are those? 03:12:03
9 A People that bought a cell phone and didn't like it. 03:12:04
10 Q Do you know of any? 03:12:11
11 A Sure. 03:12:13
12 Q Who is that? 03:12:16
13 A You know, I don't -- I can't think of the name off 03:12:17
14 the top of my head, but I just have heard people 03:12:22
15 complain about it. 03:12:25
16 Q Anyone else? 03:12:26
17 MR. KIRBY: If it makes it easier, Mark, 03:12:27
18 we're not pursuing a tarnishment theory. And I 03:12:31
19 assume that's where this line is going and what 03:12:34
20 it's contemplating. 03:12:37
21 MR. SOMMERS: Uh-huh. 03:12:39
22 MR. KIRBY: So if it makes your life 03:12:41

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1 easier, you can take that representation. 03:12:42

2 MR. SOMMERS: Okay. 03:12:44

3 THE WITNESS: And I've heard just as many 03:12:44

4 people that are pleased with "life's good" 03:12:46

5 telephones. 03:12:49

6 MR. SOMMERS: Bob, the only reason I 03:13:13

7 hesitate, I -- I assume that's also for the likely 03:13:15

8 injury that they've claimed on irreparable harm as 03:13:19

9 well? 03:13:24

10 MR. KIRBY: Correct. 03:13:24

11 MR. SOMMERS: Okay. Thank you. For both 03:13:26

12 the LG logo face and the "life's good" tag line? 03:13:43

13 MR. KIRBY: Yes. 03:13:48

14 Don't you like it when I have to answer 03:13:49

15 the questions? 03:13:51

16 THE WITNESS: Excellent. 03:13:51

17 MR. SOMMERS: He's just saving -- saving 03:13:52

18 some time, which helps us. 03:13:54

19 BY MR. SOMMERS: 03:15:09

20 Q Mr. Jacobs, has your company's business reputation 03:15:09

21 been injured in any manner because of the public's 03:15:14

22 false association -- 03:15:27

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1 advertising? 03:56:45

2 A We do not have present plans to engage in 03:56:46

3 traditional forms that are not related to our 03:56:52

4 charitable beneficiaries. 03:56:56

5 MR. SOMMERS: If I could have marked as 03:58:42

6 the next number of exhibits starting with 18 -- 18, 03:58:44

7 19, 20 and 21. 03:58:51

8 (Off-the-record discussion held.) 04:00:03

9 (Exhibits No. 18, 19, 20, 21 and 22

10 marked for identification.)

11 BY MR. SOMMERS:

12 Q Okay. Mr. Jacobs, if I could have you first look 04:02:08

13 at Exhibit 22 and ask if you can identify that 04:02:12

14 exhibit for me? 04:02:21

15 A If I can identify what? 04:02:24

16 Q Exhibit 22 for me. 04:02:26

17 A I think these are photographs of examples of "life 04:02:30

18 is good" ad campaign by Miller. 04:03:04

19 Q Earlier you referred to a -- an ad campaign run by 04:03:05

20 Miller. Am I correct that this would be the ad 04:03:10

21 campaign that you're referring to? 04:03:16

22 A It looks like it. 04:03:19

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1	Q	Do you have any reason to believe that this	04:03:21
2		wouldn't be the ad campaign?	04:03:29
3	A	No.	04:03:31
4	Q	If I could turn -- have you turn to Exhibit 21,	04:03:31
5		which is a collection of documents taken from the	04:03:48
6		U.S. Trademark Office bearing some Bates stamps	04:03:58
7		produced to us from your -- from your lawyers, and	04:04:10
8		ask you, is this the Miller applications that you	04:04:16
9		referred to earlier as having a concern about?	04:04:28
10	A	As -- as having a what?	04:04:33
11	Q	A concern.	04:04:35
12	A	Yes.	04:04:36
13	Q	Do you know whether or not your company took action	04:04:36
14		against any of these listed registrations back at	04:04:42
15		the time that you learned of this use?	04:04:49
16	A	We're talking about Miller Lite only right now?	04:04:53
17	Q	I'm referring to the instance that you referred to	04:04:59
18		earlier of Miller's use of the --	04:05:04
19	A	Yeah, just Miller.	04:05:07
20	Q	Just Miller, yes.	04:05:08
21	A	Okay. And can you define what you mean by take	04:05:10
22		action?	04:05:17

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1 Q Let me ask this: Did your company take any action 04:06:24
2 before the United States Trademark Office to 04:06:27
3 challenge or otherwise seek to cancel the various 04:06:32
4 registrations that are listed in Exhibit 21? 04:06:37
5 A I don't know. You'd have to ask Bob Pierce from 04:06:40
6 Pierce and Mandell. 04:06:45
7 Q If I could ask you to turn to Exhibit 20. Am I 04:06:46
8 correct that what I'm looking at here is a listing 04:07:02
9 for a trademark registration for the mark "life is 04:07:05
10 good; we make it better"? 04:07:12
11 A "Life is good; we make it better." It looks like 04:07:13
12 that to me. 04:07:17
13 Q And I see it's registered by a company called 04:07:18
14 Davinci Gourmet. Do you see that? 04:07:22
15 A I do. 04:07:25
16 Q Do you know, has your company ever looked into this 04:07:26
17 registration? 04:07:33
18 A I don't know. 04:07:34
19 Q Do you know if it's taken any action against this 04:07:35
20 company? 04:07:39
21 A I don't know. 04:07:40
22 Q Do you know if it's filed suit against this 04:07:41

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1		company?	04:07:49
2	A	I can be reasonably certain that -- well, I know	04:07:49
3		that we have not filed suit against this company.	04:07:53
4	Q	Okay. Do you know if it's filed any cancellation	04:07:57
5		proceedings?	04:08:00
6	A	I do not know.	04:08:02
7	Q	Who would be the individual that would know this?	04:08:03
8	A	I think that Bob Pierce is the best source for	04:08:06
9		that.	04:08:10
10	Q	In looking at this listing, does your company have	04:08:10
11		an objection to the use of this trademark?	04:08:21
12	A	I don't think I have complete information on --	04:08:25
13		on -- what's being put in front of me is the	04:08:29
14		application for the word mark. Can I ask you the	04:08:32
15		question, is what's in front of me an application	04:08:36
16		for a word mark "life is good," period, "we make	04:08:38
17		it better," period.	04:08:41
18	Q	Yes, that's what the records would show.	04:08:43
19	A	Again, not knowing, not being extremely well-versed	04:08:46
20		in the law, I would certainly pipe up and ask our	04:08:51
21		counsel to stop this, if possible, because I think	04:08:55
22		it can cause confusion. And I don't know what our	04:08:58

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1	rights are if this company was able to obtain this	04:09:02
2	trademark. My guess is they'd always have to say	04:09:05
3	"we make it better" after it, and that would be a	04:09:09
4	little less confusing so we -- we'd have to live	04:09:12
5	with it. If that answers your question.	04:09:14
6 Q	I guess my -- my question is little more basic.	04:09:16
7	Is -- is this particular usage one to which you	04:09:28
8	object?	04:09:31
9 A	What do they use it for?	04:09:31
10 Q	The listing would say --	04:09:32
11	MR. KIRBY: 035.	04:09:35
12	BY MR. SOMMERS:	04:09:37
13 Q	-- wholesale distributorships, retail outlets, mail	04:09:38
14	order, on-line ordering services featuring gourmet	04:09:41
15	flavorings, syrups, sauces and confection.	04:09:47
16 A	Yeah. I guess in answer to your question, I don't	04:09:51
17	like it, but I don't know if we have a right to	04:09:54
18	stop it. You know, we may or may not.	04:09:56
19 Q	Okay. What would that depend on?	04:09:58
20 A	That would depend on the law.	04:09:59
21 Q	Do you offer any food products?	04:10:01
22 A	Not currently. But as stated before, we have	04:10:05

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1	ambition to do so.	04:10:09
2 Q	And those are packaged products?	04:10:10
3 A	As stated before, we're open to packaged and	04:10:14
4	unpackaged.	04:10:21
5 Q	Have you ever had the intention to use the brand	04:10:22
6	for breakfast cereal?	04:10:26
7 A	Breakfast cereal?	04:10:27
8 Q	Yeah.	04:10:29
9 A	It's -- it's been put on the list before. We've	04:10:30
10	sat and had brainstorming where we listed products,	04:10:32
11	and it's been put on there.	04:10:36
12 Q	What about jams and confections?	04:10:37
13 A	Yes.	04:10:45
14 Q	If I could refer you to Exhibit 19. My question	04:11:04
15	is, is this a use of -- I'm sorry. Let me strike	04:11:11
16	that.	04:11:24
17	Is this a registration that you are aware	04:11:24
18	of?	04:11:27
19 A	Yes, it is.	04:11:29
20 Q	And what are you aware of about it? Strike that.	04:11:30
21	That was an awful question.	04:11:37
22	What -- what -- how did you become aware	04:11:38

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1	of this?	04:11:40
2 A	The law firm Pierce and Mandell did a search at	04:11:40
3	some point. I believe we were looking into	04:11:49
4	registering for ice cream. And they did a search	04:11:52
5	and --	04:11:56
6	MR. KIRBY: I think you --	04:12:02
7	THE WITNESS: -- found this.	04:12:04
8	BY MR. SOMMERS:	04:12:06
9 Q	And they did a search and revealed what?	04:12:07
10 A	They found this information.	04:12:09
11 Q	To your knowledge, have you taken any action	04:12:12
12	against this company?	04:12:18
13 A	I don't -- I don't think so.	04:12:20
14 Q	When did --	04:12:24
15 A	I can't be certain, but I don't think so.	04:12:27
16 Q	When did you come to learn about this?	04:12:29
17 A	I don't -- I don't recall. A few years back,	04:12:32
18	anyway.	04:12:39
19 Q	And have you sued this company?	04:12:40
20 A	We have not.	04:12:42
21 Q	Do you know whether you have filed any action	04:12:43
22	before the trademark office to cancel this	04:12:47

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1	'97 --	04:47:32
2	BY MR. SOMMERS:	04:47:32
3 Q	I guess what I'm -- I'm asking is, if you'll turn	04:47:32
4	to page 8, paragraph 49.	04:47:35
5 A	Yeah.	04:47:37
6 Q	I'm just understanding --	04:47:37
7 A	Well-known throughout the United States, yeah.	04:47:40
8 Q	I'm trying to understand. What do you mean by	04:47:42
9	well-known?	04:47:45
10 A	Well, I think it's easy to say this, 49, but it's	04:47:45
11	hard to say what you're saying. And I'll tell you	04:47:49
12	what I mean by that. It's easy to say that today	04:47:51
13	they're well-known, because we sell to over 5,000	04:47:55
14	retailers; we do \$60 million in business. And you	04:47:58
15	know, I suppose if we did a survey, we could find	04:48:03
16	out that, you know, today the brand is well-known.	04:48:06
17	Okay?	04:48:09
18	However, to pinpoint when it becomes	04:48:10
19	well-known, that means you have to identify exactly	04:48:14
20	at what point a brand is well-known. So I don't	04:48:18
21	know if that's '96, '97, '98, '99 or 2000 or -- or	04:48:21
22	who's determining that. I think almost anyone	04:48:28

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1	Sportswear Monthly.	04:50:22
2	BY MR. SOMMERS:	04:50:26
3 Q	Would you agree with me that engaging in national	04:50:27
4	mass advertising helps a brand become well-known?	04:50:31
5 A	In most cases, yes.	04:50:35
6 Q	And in what cases would it not?	04:50:38
7 A	I suppose a poorly planned ad campaign.	04:50:44
8 Q	Do you have any specific examples?	04:50:48
9 A	I don't.	04:50:54
10 Q	Mr. Jacobs, are you aware of companies using smiley	04:51:10
11	faces as trademarks?	04:51:14
12 A	Companies using smiley faces as trademarks. No.	04:51:19
13	I'm sure there's probably some examples, but,	04:51:28
14	offhand, I don't have specific ones in my memory.	04:51:31
15 Q	Are you aware of companies using smiling faces or	04:51:33
16	smiley faces as ornamentation?	04:51:37
17 A	Yes. Again, I don't have specific examples in	04:51:42
18	mind, but I'm sure it happens.	04:51:45
19 Q	Are you aware of whether Wal-Mart uses smiley -- a	04:51:47
20	smiley face?	04:51:51
21 A	Yes, I've seen that. I think it's the traditional	04:51:52
22	smiley face, is it?	04:51:57

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1 Q Yes., Are you aware of Yahoo! using smiley -- 04:51:59
2 smiley faces? 04:52:03
3 A I don't use Yahoo! myself, so no. But I'll take 04:52:03
4 your word. 04:52:09
5 Q What about McDonald's; are you aware of their use 04:52:09
6 of smiley faces? 04:52:13
7 A McDonald's is another one that I don't frequent. 04:52:15
8 So again, I'll -- I'll take your word for it that 04:52:18
9 they're using smiley faces. 04:52:20
10 Q What about Joe Boxer? 04:52:22
11 A Yes. I'm familiar with that one; that's within the 04:52:24
12 industry. 04:52:27
13 Q Have you ever seen a Massachusetts license plate 04:52:27
14 with smiley faces? 04:52:30
15 A No, I don't recall that. 04:52:32
16 Q Does Joe Boxer's use of a smiley face -- smiley 04:52:33
17 face concern you? 04:52:46
18 A No, it doesn't. 04:52:47
19 Q Why is that? 04:52:48
20 A I believe -- I'm -- I'm sorry. A few reasons. 04:52:49
21 First of all, it's the -- it's also the traditional 04:52:56
22 smiley face, if I remember correctly. And not -- 04:53:03

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1 not too similar, in our opinion, to our Jake 04:53:11

2 character. But more importantly, it doesn't use a 04:53:18

3 word mark or word marks that are confusingly 04:53:24

4 similar to ours. So I think people have any right 04:53:30

5 to use a smiley face. I don't think we have the 04:53:33

6 rights to all smiley faces. 04:53:37

7 Q Outside of LG's use of the words "life's good", to 04:53:40

8 your knowledge, have they engaged in any other 04:53:52

9 conduct or actions that you believe infringe your 04:53:57

10 rights? 04:54:02

11 A I'm sorry. I'm going to ask you to restate it. 04:54:03

12 Q Please. Other than the use of the words "life's 04:54:11

13 good", is LG engaging in any other action to draw 04:54:15

14 an association or connection with your company? 04:54:30

15 A Yes. 04:54:32

16 Q What's that? 04:54:33

17 A I would say that in addition to using the brand 04:54:34

18 slogan "life's good," they have also used "life is 04:54:38

19 good." In addition to that, they have associated 04:54:44

20 either or both of these with a smiley face, which, 04:54:46

21 in our opinion, is added confusion. 04:54:51

22 Q You just used the words "life is good." In what 04:54:55

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1	information that your company puts out in press	05:43:57
2	releases is factually accurate?	05:44:02
3 A	The information our company -- sure.	05:44:06
4	MR. SOMMERS: If I could have the next	05:45:53
5	exhibit marked as 25. We'll get a copy for you.	05:45:55
6	(Exhibit No. 25 marked for	
7	identification.)	05:46:14
8	BY MR. SOMMERS:	05:46:14
9 Q	Mr. Jacobs, I've handed you some financial	05:46:14
10	information that appears as Exhibit 25. My	05:46:18
11	question to you is, do you know -- or let me strike	05:46:21
12	that.	05:46:26
13	Were you involved in the preparation of	05:46:26
14	this material?	05:46:28
15 A	Not directly.	05:46:29
16 Q	Is this something that you would have	05:46:31
17	responsibility for?	05:46:36
18 A	I would have the responsibility to look over the	05:46:44
19	P&L sheet and balance sheet, but not to prepare the	05:46:46
20	information.	05:46:49
21 Q	Would these numbers accurately reflect the	05:46:49
22	financial performance of your company?	05:46:52

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1	A	Looks about right.	05:46:54
2		MR. KIRBY: Is this a document that we	05:47:07
3		produced, Mark?	05:47:10
4		MR. SOMMERS: Yeah.	05:47:12
5		THE WITNESS: The only one I find a	05:47:13
6		little funny is the advertising and marketing.	05:47:14
7		BY MR. SOMMERS:	05:47:17
8	Q	And why is that?	05:47:17
9	A	Maybe it's not high. Seems a bit high. 1.3	05:47:19
10		million on 40 million in 2004. But maybe we spent	05:47:25
11		a lot in trade shows and things. Seems a bit high.	05:47:29
12		MR. SOMMERS: Thank you. Mr. Jacobs, I	05:47:34
13		want to thank you for taking the time today to come	05:47:35
14		and testify on behalf of your company. I	05:47:38
15		personally thank you, as does my client, for	05:47:44
16		appearing here today. I have no further questions	05:47:47
17		at this time.	05:47:51
18		MR. KIRBY: Thank you.	05:47:52
19		THE VIDEOGRAPHER: The time is 5:48.	05:47:55
20		This is the end of cassette number 8. The	05:47:58
21		deposition is concluded.	05:48:01
22		(Whereupon, this deposition was concluded at	05:48:04

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